BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Telecommunications Act of 1996:	)	CC Docket No. 96-152
	)	
Telemessaging, Electronic Publishing, and Alarm Monitoring Services	)	

COMMENTS OF SBC COMMUNICATIONS INC.

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SUMMARY*

The Commission should exercise restraint, and adopt no rule unless necessary to resolve undisputed ambiguity in statutory language. Congress has instituted a de-regulatory national policy framework. It has provided private parties new opportunities to redress any perceived wrongs arising under the Act. It has carefully weighed the pertinent competitive considerations and has struck the appropriate balance by crafting the specific and detailed provisions of the electronic publishing, telemessaging and alarm monitoring statutes. Importantly, Congress has not directed the Commission to undertake any specific rulemaking regarding electronic publishing, and in connection with alarm monitoring and telemessaging, it has only directed the Commission to establish internal procedures for the handling of complaints resulting in material financial harm. In light of these considerations, the Commission could best serve the public interest by avoiding any "rush to regulation."

Heeding the call of restraint would give full effect to Congress' policy determinations as expressed in its own specific statutory language. It would lessen the costly burdens of regulatory compliance. Finally, it would allow service providers to put maximum effort into delivering new and improved telecommunications services to a public who increasingly demands them on a "one-stop shopping" basis.

To the extent that the Commission concludes that it must adopt any rules, it should employ traditional tools of statutory construction in doing so. As a result, the Commission should conclude that:

- The several separated affiliate and joint venture requirements of Sections 274(a) and (b) need no implementing rules. These provisions are among the most comprehensive and specific in the entire Act on their face.

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* All abbreviations used herein are referenced within the text.

- No additional "operated independently" requirements should be added to the nine already expressly listed in the electronic publishing statute. Congress intended that these be sufficient and exclusive.

- The joint marketing freedoms conferred by Section 274(c)(2) regarding in-bound telemarketing, referral services, teaming and business arrangements, and other combinations, should be construed in a manner that will maximize carriers' ability to meet consumers' demand for a "one-stop shopping" communications environment.

- The specific Section 274(c)(2) provisions granting broad joint marketing freedoms should prevail over the general Section 274(c)(1) joint marketing prohibitions.

- The operational independence provisions of Section 274(b)(1) through (9) must yield to the specific joint marketing freedoms granted by Section 274(c)(2), so that, for example, a BOC involved in a permissible teaming arrangement may "share" employees with its separated affiliate and may hire and train employees in support of permissible marketing efforts.

- No regulations are needed to interpret or implement the specific statutory nondiscrimination requirements within Section 260(a)(2), Section 274(d) or Section 275(b)(1). Each are sufficiently clear such that additional regulation is unnecessary, and in any event, disputes may be resolved by resorting to the complaint process or litigation.

- Any rules adopting nondiscrimination obligations regarding telemessaging must be applied to all LECs, and any such rules implemented in the alarm monitoring service context must be made applicable to all incumbent LECs.

- Section 275(a)(1) of the alarm monitoring statute only prohibits BOC "provision" of alarm monitoring service; a BOC's rendering of billing and collection and sales agency services, and its sale, installation and maintenance of alarm CPE, do not constitute the "provision" of alarm monitoring service.

- The Act does not alter the traditional legal and evidentiary standards that should govern a prima facie claim under Sections 260, 274 and 275, and no additional regulations are necessary to define what constitutes a prima facie claim under any of these sections.

- The burden of proof to demonstrate a violation of any of Sections 260, 274 or 275 must remain with the complainant, and nothing in the Act indicates that Congress intended to change this well-established legal principle.

- The required showing of material financial harm for purposes of expediting the treatment of a complaint must be predicated upon direct, quantifiable and substantial (not trivial) damages.

- No cease and desist order based on a complaint filed under either Section 260 or Section 275 should be issued without a sufficient demonstration of irreparable harm absent such relief, a substantial likelihood of success on the merits, and notification to the opposing party to the extent possible.

An agency's propensity to regulate all things can be tempting if not overpowering, particularly where such regulation has become, by inertia or otherwise, the accepted means for shaping behavior. In the Telecommunications Act of 1996, Congress has directed a new course, and a rush to regulation is no longer appropriate, particularly in the electronic publishing, telemessaging and alarm monitoring industries. Should the Commission disagree, still it should simply carry out Congress' own intent as expressed in the pertinent statutes, and should not in any event change the rights and obligations that Congress settled upon.

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COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc. ("SBC"), by its attorneys and on behalf of its subsidiaries, hereby offers these comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM")[1] in the above-referenced docket, regarding the non-accounting portions of the Telecommunications Act of 1996 ("Act")[2] relating to telemessaging, electronic publishing and alarm monitoring.

I. INTRODUCTION

The Commission states that its purpose in undertaking this rulemaking is limited "to clarify[ing], where necessary, and to implement[ing]" the non-accounting separated affiliate and nondiscrimination safeguards of Sections 260, 274 and 275 of the Act. NPRM, para. 2 (emphasis added). The Commission's actions should be limited to this purpose.

In approaching its task, the Commission should exercise restraint, and decline to adopt any particular rule unless it is convinced that a rule is necessary to resolve undisputed ambiguity within

[1] FCC 96-310, released July 18, 1996.

[2] Pub. L. No. 104-104, 110 Stat. 56 (1996), codified at, 47 U.S.C. §151 et seq.

the pertinent statute.[3] Keeping rules to a minimum is important because Congress has mandated a de-regulatory national policy framework. NPRM, para. 1. Such a framework would be subverted were the Commission to adopt extensive new rules.

In addition, the Act grants private parties expanded rights, including new causes of action, by which to redress any individual wrongs that may arise under the comprehensive provisions of Sections 260, 274 and 275, and Congress intended that these rights stand in the stead of pervasive government regulation.[4] The Commission should respect Congress' greater emphasis on the newly expanded role of private parties as the preferred means by which to ensure compliance with the Act's obligations.[5]

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[3] Restraint is particularly important in this proceeding because, for the most part, there is no "statutory mandate" that the Commission adopt any rules regarding Sections 260, 274 and 275 of the Act. See, Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information; Use of Data Regarding Alarm Monitoring Service Providers, CC Docket No. 96-115, Report and Order, FCC 96-329, released August 7, 1996 ("Alarm Monitoring Order"), at para. 12 (declining to adopt expedited procedures to enforce Section 275(d) on the ground that there is no "statutory mandate" to do so). Compare, Section 251(d)(1) ("the Commission shall complete all actions necessary to establish regulations to implement the requirements of this section"). Moreover, to the extent that most of these sections are written in clear and specific language, adoption of rules is not necessary to codify their meaning. Alarm Monitoring Order, at para. 10.

[4] Specifically, Congress provided complainants under the electronic publishing statute with a private right of action for both damages and cease and desist orders. Section 274(e). Complainants under the voice messaging and alarm monitoring statutes are entitled to expedited consideration of material wrongs. Section 260(b); Section 275(c).

[5] For example, the Commission has recently concluded that detailed Commission rules are not required to implement the requirement under Section 251(c)(3) that LECs must permit competing providers nondiscriminatory access to operator services, and has noted that disputes concerning such nondiscriminatory access can be addressed under the complaint and forfeiture provisions of the Act. Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Second Report and Order, FCC 96-333, released August 8, 1996, paras. 121-122 & n. 288.

Finally, Congress has already weighed the various competitive considerations and has "made the cut" on the appropriate balance to be struck. The result is very precise, detailed statutory language in each of the electronic publishing, alarm monitoring and telemessaging contexts. The Commission should not attempt to "rebalance" the competitive scales by adopting rules that would impose obligations on the Bell Operating Companies ("BOCs") not specified by the terms of the governing statute.

The substantive provisions of Sections 260, 274 and 275 do not need to be the subject of any additional rules, and none of Sections 260(a)(2), 274(d) or 275(b)(1) requires that the Commission adopt any nonstructural safeguards (much less continue all of the Computer III and ONA safeguards).[6] If the Commission must interpret the joint marketing provisions of Section 274(c)(2), the Commission should bear in mind its often stated and unequivocal approval of "one-stop shopping." This factor, and others, should lead the Commission to embrace two key principles in the electronic publishing context: first, the authority to engage in inbound telemarketing referral services, teaming and business arrangements, and other combinations -- which are expressly permitted by the specific language of Section 274(c)(2) -- prevails over Section 274(c)(1)'s general joint marketing prohibitions; and second, the same authority to engage in these arrangements and combinations

[6] This omission stands in contrast to the Act's payphone statute, which directs the Commission to prescribe regulations and which also includes explicit references to carrying forward pre-Act nonstructural safeguards in that context. Specifically, Section 276(b)(1)(C) directs the Commission to "prescribe a set of nonstructural safeguards for [BOC] payphone service...,which standards shall, at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry-III (CC Docket No. 90-623) proceeding." In all cases, any nonstructural safeguards adopted to implement the alarm monitoring statute must be applied to every "incumbent local exchange carrier," Section 275(b)(1), and any such rules meant to implement the telemessaging statute must be applied to every "local exchange carrier." Section 260(a)(2).

prevails over the general "operational independence" standards of Section 274(b)(1) through (9) in the context of marketing, sales, promotions and advertising.

If the Commission must interpret the provisions of the alarm monitoring statute, Section 275(a), the Commission should simply conclude that a BOC is prohibited from engaging in the "provision" of alarm monitoring service, as stated in the statute. It should also conclude that billing and collection and sales agency activities on behalf of an unaffiliated alarm monitoring service provider do not constitute "provision" of alarm monitoring service. Those that may urge the Commission to expand the statutory prohibition must be turned away. Their efforts should be directed to Congress, not this Commission.

II. BOC PROVISION OF ELECTRONIC PUBLISHING - SECTION 274

A. Separated Affiliate and Joint Venture Requirements - NPRM (paras. 32-34)

Section 274(a) - Regarding certain definitional matters, the Commission correctly concludes that either a BOC's separated affiliate or an electronic publishing joint venture ("joint venture") may engage in the provision of electronic publishing disseminated by means of the BOC's or its affiliate's basic telephone service. NPRM, para. 32. Subsection (a) expressly so provides. The Commission should recognize, however, that a BOC and any of its affiliates (whether separated or not) are entitled to engage in electronic publishing that is not disseminated by either the BOC's or its affiliate's basic telephone service. This construction of Section 274(a) is also consistent with the statute's conditional application to the use of "basic telephone service."

The Commission also correctly concludes that, while the joint venture definition does not speak to any particular percentage of BOC ownership, Section 274(c)(2)(C) does effectively limit the allowable percentage of BOC ownership in a joint venture, as well as the allowable share of revenues

which a BOC may receive. NPRM, para. 34. As in the case of other precise language reflecting Congress' direction, Section 274(c)(2)(C) should be given the meaning that Congress intended it to have.

B. Structural Separation and Transactional Requirements - NPRM (paras. 35-48)

The Commission seeks comment on several matters regarding the proper interpretation and implementation of Section 274(b). NPRM, paras. 35-46. SBC addresses these matters in the order in which they are presented in the NPRM.

Section 274(b) - This subsection requires that a separated affiliate or joint venture must be "operated independently" from the BOC. Subsection (b) is immediately followed by nine indented paragraphs (paragraphs (b)(1) through (b)(9)), indicating the specific requirements chosen by Congress to ensure operational independence. Congress' placement of these nine paragraphs within subsection (b) indicates its intent that they be regarded as the complete measure of compliance with the operational independence standard.

Furthermore, had Congress intended that other or additional specific requirements be imposed, it could have expressly provided for them. That Congress did not so provide indicates that the listed statutory requirements are sufficient and exclusive, particularly given that the specific operational independence requirements that it did enact are the most stringent in the Act. In short, Congress concluded that the operational independence standard should be comprised of nine elements, no more, no less. Thus, the Commission should not adopt any "additional" regulatory requirements. NPRM, para. 35.

Moreover, the statute contains no indication that Congress intended for the operational independence standard to be defined differently for a separated affiliate as opposed to a joint venture,

and the Commission should not undertake to do so. Id. Rather than engaging in conjecture to find intent where none exists, the more prudent course would be simply to apply the express terms of each of the nine paragraphs to separated affiliates or joint ventures, as applicable.

If the Commission must adopt an interpretive rule at all, it should adopt one which simply reflects the substance of paragraphs (1) through (9), without placing additional new or detailed requirements on a BOC, its separated affiliate, or a joint venture. Thus, the Commission could interpret the phrase as meaning that each of the business decisions of the BOC, separated affiliate, or joint venture which relates to any of the subjects identified within paragraphs (1) through (9) must be made by each entity independently of the other, so that the BOC may neither direct nor influence any such decision-making process.

Section 274(b)(2) - The Commission need not interpret the clearly self-explanatory provision that a separated affiliate or joint venture and the BOC shall "not incur debt in a manner that would permit a creditor of the separated affiliate or joint venture upon default to have recourse to the assets of the [BOC]." Furthermore, the Commission need not establish specific rules attempting to identify the types of activities contemplated by this provision.

No useful purpose would be served by either promulgating a regulation prohibiting a BOC from cosigning a contract or any other instrument, NPRM, para. 37, or by speculating as to whether the subsection might affect a separated affiliate differently than a joint venture.[7]

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[7] BOC relationships with their separated affiliates may vary considerably given that such affiliates' purposes and organizational structures are not required to be uniform. BOC participation in joint ventures may vary to an even greater degree given the multiple structures and forms of joint ventures. To the extent that a "different corporate relationship" may exist in any of these instances, it would be far better to explore such differences in the context of a specific set of facts presented on a case-by-case basis, rather than attempting to account for them all in an unrealistic and inflexible "one size fits all" rule.

Section 274(b)(5) - The Commission accurately concludes that a BOC and a joint venture in which it may participate may have officers, directors, and employees in common, and that a BOC and joint venture may own property in common. NPRM, para. 39. The statutory language is directed solely to a separated affiliate.

Section 274(b)(5)(A) - The degree of "officer, director, and employee" separation generally required by this provision is subject in all respects to Congress' positive grant of authority to the BOCs to engage in joint marketing activities, as provided by Section 274(c)(2). Thus, the Commission should conclude that to the extent that a BOC and a separated affiliate engage in joint marketing activities permitted by Section 274(c)(2)(A) and (B), the affiliate and BOC may employ individuals in common (or otherwise "share") marketing personnel in furtherance of these activities.[8]

The Commission somewhat rhetorically asks how BOCs could engage in joint marketing if they could not share marketing personnel, correctly observing that merely allowing the marketing personnel of the BOC and the separated affiliate "to each market the services of the other...would reduce the efficiencies generally associated with joint marketing ventures." NPRM, para. 40. The fact is, as discussed more fully at Section III.C., infra, regarding Joint Marketing, customer satisfaction and scope and scale efficiencies are maximized only to the extent that providers offer "one stop shopping." Congress recognized this fact in allowing the BOCs to joint market with separated affiliates under the circumstances permitted by Section 274(c)(2).

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[8] A BOC may provide to a separated affiliate "inbound telemarketing or referral services" in accordance with Section 274(c)(2)(A), and/or engage in "teaming or business arrangements" with it in accordance with Section 274(c)(2)(B).

As a result, and for the further reasons stated at Section III. C., infra, Section 274(b)(5)(A) and Section 274(c)(2) may be easily harmonized. The general "in common" prohibition of the former must yield to the specific joint marketing authority expressly conferred by the latter.

Section 274(b)(5)(B) - The requirement that a BOC and separated affiliate "own" no property in common is precise and measured. The statute does not also state that a BOC and separated affiliate are prohibited from "sharing" the use of property owned by one or the other of them, a matter about which the Commission inquires. NPRM, para. 42. Nor does the statute prohibit joint "leasing" of property, another matter about which the Commission inquires. Id.

Congress' use of the singular term "own" reflects its determination that other forms of the use and enjoyment of property, such as the "sharing" and "leasing" of such property, are permitted. Given the common understanding of what constitutes ownership, and the common understanding that mere possession (whether by sharing or leasing) does not constitute ownership, the Commission need not add words that Congress well knew how to add had it intended to do so.[9]

Section 274(b)(6) - The Commission is correct in tentatively concluding that the statute regarding separate affiliate or joint venture use of the name, trademarks, or service marks of an existing BOC is "precise," and that no implementing regulations are necessary. NPRM, para. 43.

Section 274(b)(7) - The prohibitions against a BOC's performing of hiring and training, Section 274(b)(7)(A), purchasing, installation or maintenance of equipment, Section 274(b)(7)(B), and research and development, Section 274(b)(7)(C), apply only where such activities are undertaken

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[9] With regard to addressing both of these questions, the Commission should be guided by the same rationale it employed in tentatively concluding that regulations need not be developed regarding trademark matters discussed at Section 274(b)(6): "Because this provision appears to be quite precise, we tentatively conclude that the adoption of regulations to implement this provision is unnecessary." NPRM, para. 43. Section 274(b)(5)(B) is no less precise than Section 274(b)(6).

on behalf of a separated affiliate. A BOC is permitted, therefore, to perform all of these activities on behalf of a joint venture (as opposed to a separated affiliate), and the Commission should so conclude. NPRM, para. 44. In this regard, the Commission's analysis here should be no different than it employed in connection with Section 274(b)(5) at paragraph 39 of the NPRM, also distinguishing between rules applicable to separated affiliates versus those applicable to joint ventures. Similarly, an affiliate of the BOC (as opposed to the BOC itself) is free to perform any of these activities for or on behalf of a separated electronic publishing affiliate, as the statutory prohibitions are directed only to BOCs.

Section 274(b)(7)(A) - For reasons similar to those advanced in connection with Section 274 (b)(5)(A), where a BOC and separated affiliate are engaged in the joint marketing activities permitted by Section 274(c)(2)(A) and (B), the BOC should be permitted to hire and train marketing personnel necessary to meaningfully carry out these activities. NPRM, para. 45. Thus, for example, a BOC engaged in a teaming or other business arrangement with a separated affiliate, for the purpose of jointly marketing electronic publishing services, should be permitted to perform hiring and training functions for the affiliate notwithstanding Section 274(b)(7)(A).

This construction results in a defined "joint marketing" exception to the general hiring and training ban, to permit the kind of effective, customer-friendly joint marketing that the Commission states is in the interests of consumers. NPRM, paras. 5, 40. Moreover, no adverse competitive impact would flow from such a construction of the statute, because such teaming or other business arrangements that any BOC would enter into would have to be conducted on a "nondiscriminatory" basis.

Section 274(b)(7)(B) - Under this subsection generally, the BOC may not purchase, install or maintain equipment for a separated affiliate "except for telephone service that it provides under tariff or contract." Clearly, the exception allows a BOC to provide telephone service to the affiliate. Fairly read, it also allows a BOC to purchase, install and maintain the transmission equipment necessary or incidental to providing such telephone service. NPRM, para. 45. Had Congress intended that no equipment could be provided even in these circumstances, there would have been no need to state the exception. Conversely, giving effect to the exception still would result in a reading that equipment other than that necessary or incidental to providing telephone service remains subject to the ban.

Section 274(b)(7)(C) - Under this subsection, a BOC may not perform research and development "on behalf of" a separated affiliate. The Commission correctly suggests that this subsection limits a BOC's ability to perform these activities "for the sole and exclusive use" of that affiliate. NPRM, para. 46. However, the Commission should not conclude that the subsection also prevents the BOC from performing any research or development that "may potentially be of use to" a separated affiliate. Id.

First, the words "on behalf of" typically mean "at the request of" or the like and cannot reasonably be construed so broadly as contemplated by the NPRM. Second, a BOC should not be required to speculate as to whether any individual instance of research and development might ever be of use to a separated affiliate, particularly in light of the continued blurring between traditional telephone service offerings and new and more advanced service offerings. Third, even if such potential use might be reasonably apparent, it would be poor public policy to require cessation of worthwhile research and development for an entity not engaged in providing electronic publishing

merely because the result might also be applied to electronic publishing at some point in the future.

For these reasons, the Commission should avoid any construction of the statute that would place a chill on otherwise worthwhile developmental endeavors. A "potential use" test would not serve the public's continued desire for new and different communications solutions in their daily personal and professional lives, nor the BOCs' ability to serve them.

C. Joint Marketing Activities - NPRM (paras. 49-63)

Section 274(c)(1) - Paragraph (A) of this subsection generally provides that the BOC may not perform promotion, marketing, sales or advertising for a separated affiliate. The language in paragraph (B), which prohibits a BOC from performing these activities "for or in conjunction with an affiliate that is related to the provision of electronic publishing," should be construed as prohibiting such activities for or in conjunction with an affiliate only if the activities of the BOC would relate to the provisioning of electronic publishing. NPRM, para. 50.

If a BOC performs services for an affiliate, including promotion, marketing, sales or advertising, that are unrelated to the provisioning of electronic publishing, Section 274(c)(1)(B) has no application. Further, nothing in this statutory section precludes the BOC from carrying out joint marketing activities with an affiliate that acts as an agent for the sale of the BOC's services, as long as that affiliate is not a "separated affiliate." Finally, the statute does not preclude that affiliated agent from also acting as an agent for a "separated affiliate" as long as the BOC continues to comply with Section 274(c)(1)(A) & (B).

In addition, the joint marketing prohibitions do not apply at all to electronic publishing joint ventures. As the Commission correctly observes, Section 274(c)(2)(C) permits a BOC to "provide promotion, marketing, sales or advertising personnel and services" to a joint venture in which the

BOC participates. NPRM, para. 51. Thus, the Commission should conclude that the term "affiliate" in Section 274(c)(1)(B) excludes a joint venture.

Section 274(c)(2) - This subsection permits three types of joint marketing activities between a BOC and a separated affiliate, a joint venture, and others. Collectively, subparagraphs (A), (B) and (C) provide comprehensive grants of authority which, when applicable, are intended to allow the BOCs to engage in graduated degrees of promotion, marketing, sales and advertising for and with their electronic publishing separated affiliate and other electronic publishers.

As a result, subparagraph (A) should be interpreted to preserve to BOCs the inbound telemarketing authority granted them by Congress. Subparagraph (B) should be interpreted to allow the BOCs and their separated affiliates to engage in the joint promotion, marketing, sales and advertising of their respective services (including "one-stop shopping")[10] pursuant to a teaming or any other business arrangement. Subparagraph (C) should be interpreted as allowing the BOC to provide personnel and services of whatsoever nature to a joint venture. Only these interpretations would give full effect to all provisions of Section 274(c)(2) in the manner contemplated by Congress.

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[10] The Commission has frequently praised the "one-stop shopping" model, recognizing its many benefits to both the public and the industry. McCaw/AT&T Transfer of Control of McCaw Cellular Communications, Inc. and its Subsidiaries, Memorandum Opinion and Order on Reconsideration, 10 FCC Rcd 11786 (1995), at paras. 15-16 ("We believe that the benefits to consumers of 'one-stop shopping' are substantial . . ..The ability of a customer, especially a customer who has little or infrequent contact with service providers, to have one point of contact with a provider of multiple services is efficient and avoids the customer confusion that would result from having to contact various departments within an integrated, multi-service telecommunications company. . .. The benefits of 'one-stop' shopping are substantial. 'One-stop shopping' promotes efficiency and avoids customer confusion. We find that these benefits outweigh any potential competitive inequity."); BOC CPE Relief Order, 2 FCC Rcd 143 (1987), at para. 29 ("The polls and surveys conducted. . .on this issue, as well as informal comments and letters filed by individual users, indicate that a broad spectrum of communications users desire vendors that can be single sources for telecommunications products.")

Finally, these specific and comprehensive grants of authority should prevail over any potentially conflicting general language in the statute. For example, the general joint marketing prohibition stated at Section 274(c)(1) begins with the language: "Except as provided in paragraph (2)...." As a result, a BOC promotion, marketing, sales or advertising activity undertaken in full compliance with Section 274(c)(2) is not subject to the general Section 274(c)(1) prohibitions. In addition, where there is conflict between the authority conferred by Section 274(c)(2) and the general operational independence requirements of Section 274(b), the former, more specific provisions should control.[11]

Joint Telemarketing - Under the narrowest of the three forms of involvement in the joint marketing of electronic publishing services, a BOC may provide "inbound telemarketing or referral services related to the provision of electronic publishing" for a separated affiliate, an affiliate, a joint venture, or an unaffiliated electronic publisher. Section 274(c)(2)(A). Inbound telemarketing includes the "marketing of property, goods and services by telephone to a customer or potential customer who initiated the call." Section 274(i)(7).

Given these specific provisions, the Commission should not construe subparagraph (A) to merely permit the BOC to "refer" a customer who requests information regarding an electronic publishing service to its affiliate. NPRM, para. 55. To the contrary, the subparagraph (A) reference to inbound telemarketing expressly allows a BOC to market electronic publishing services to

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[11] Morales v. Trans World Airlines, Inc., 504 U.S. 374, 384 (1992)("[I]t is a commonplace of statutory construction that the specific governs the general."). Thus, for example, where a BOC and separated affiliate are engaged in permissible joint marketing activities under Section 274(c)(2)(A) or (B), they may utilize or "share" marketing personnel in support of those activities notwithstanding the general "employees in common" prohibition appearing at Section 274(b)(5)(A), and the BOC also may hire and train personnel necessary to perform those activities notwithstanding the general "hiring and training" prohibition appearing at Section 274(b)(7)(A). See also, discussion at Section II.B., supra).

customers who may inquire about them, and should also allow a separated affiliate or a BOC to advertise a BOC call-in number to which potential customers might choose to initiate a call.

Broad interpretation of the telemarketing authority granted BOCs will accelerate the rate at which the mass market will assimilate and appreciate the many benefits of electronic publishing services that are expected to continue to emerge. Moreover, a broad interpretation will not compromise any competitive objectives, because any such telemarketing and referral services must be made available to all electronic publishers upon request, on nondiscriminatory terms and conditions. Section 274(c)(2)(A).

Finally, the Commission need not adopt any regulations prohibiting outbound telemarketing by a BOC. NPRM, para. 55. It is sufficient that the authority provided by paragraph (A) does not refer to such telemarketing. A regulation is unnecessary.

Joint Ventures - Under the broadest form of involvement in joint marketing, a BOC may own 50% of a joint venture, and have up to 50% voting power in the venture. Furthermore, this subsection explicitly authorizes the BOC participating in an electronic publishing joint venture to "provide promotion, marketing, sales, or advertising personnel and services." Section 274(c)(2)(C) (emphasis added). Thus, in a joint venture, the venture itself may be staffed by BOC marketing and sales personnel.

Teaming or Business Arrangements - As the Commission observes, Section 274(c)(2)(B) permits a BOC to engage in "teaming or business arrangements" with a separated affiliate or with any other electronic publisher to provide electronic publishing services. NPRM, para. 56. The Commission also correctly notes that subparagraph (B) "appears to permit a BOC to participate in any type of business arrangement to engage in electronic publishing so long as the BOC complies with

the conditions set forth therein." Id. para. 57. (emphasis added). The Commission should give full effect to subparagraph (B) and interpret it to permit a BOC and its separated affiliate to jointly promote, market, sell and advertise their respective services pursuant to any form of business arrangement reached between them, as Congress intended.

Any interpretation of the teaming or business arrangement provision that would preclude a BOC from providing these services would render superfluous and meaningless the subparagraph (B) obligation that the BOC should only provide "facilities, services, and basic telephone service information as authorized by this section." In other words, if the teaming or business arrangement provision were read to limit the BOC to providing only the facilities and services which it is already authorized to provide elsewhere in Section 274, the joint marketing authority specially conferred by Section 274(c)(2)(B) would be without any force or effect. This would be counter to the well-established rule of statutory construction that every legislative provision is presumed to have independent meaning and effect.[12]

The nondiscrimination obligations provide evenhandedness in the BOCs' provision of marketing and other services to other electronic publishers. While SBC is unaware of any legislative history addressing this aspect of Section 274, it understands that the concept of a "teaming arrangement" came about as a result of various joint marketing agreements (between certain BOCs and unaffiliated entities) that were in place long before the enactment of the Act. Apparently to preserve these arrangements, and to continue to allow BOCs to enter into others, Section 274 (c)(2)(B) was enacted, thus allowing BOCs to continue to provide marketing services to electronic

[12] See, e.g., National Insulation Transportation Commission v. ICC, 683 F. 2d 533, 537 (D.C. Cir. 1982)("court must, if possible, give effect to every phrase of a statute"); 2A Norman J. Singer, Singer Statutory Construction, §46.06 at 119 (5th ed. 1992)("[a] statute must be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous").

publishers -- including their electronic publisher affiliates -- so long as those arrangements reflect nondiscriminatory terms and conditions.

The Commission should give effect to the comprehensive, graduated nature of joint marketing authority conferred upon the BOCs, and should not deprive consumers of the "one-stop shopping" opportunities allowed under the electronic publishing statute's joint activities provisions. In particular, when engaged in permissible inbound telemarketing/referral activities, or when engaged in teaming or business arrangements, the BOCs should be permitted to make available local exchange or other BOC services together with electronic publishing services, making those services available from a single source. While these activities may at first appear to be prohibited by the general joint marketing prohibition appearing at Section 274(c)(1), such activities are specifically authorized by Section 274(c)(2) involving "permissible joint marketing" activities. NPRM, para. 53, and the general prohibition must give way to this specific grant of authority.[13]

Section 274(i)(3) - The Commission inquires as to how the phrase "basic telephone service information" relates to the requirements of Section 222 regarding access to and use of CPNI. NPRM, para. 57. Section 274(i)(3) defines basic telephone service information as "network and customer information of a [BOC] and other information acquired by a [BOC] as a result of its engaging in the provision of basic telephone service." Section 274(c)(2)(B) clearly authorizes a BOC to use such information in the context of teaming or business arrangements, as it indicates that a BOC may provide "basic telephone service information as authorized by this section." (emphasis added)

Where the information contemplated to be used qualifies as both basic telephone service information under Section 274(i)(3) as well as customer proprietary network information under

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[13] See, Section II.B., and note 11, supra.

Section 222(f)(1), the terms of the electronic publishing statute should prevail over the general CPNI statute. Section 274 contains no "approval" requirement as a precondition to use or disclosure of, or access to, basic telephone service information, and Section 222 has no application to electronic publishing services. Thus, when engaged in permissible teaming or business arrangements, a BOC should be permitted to use such information without first obtaining the approval contemplated by Section 222(c)(1). Such a construction of the two statutes would carry out Congress' intent that use of proprietary information to market electronic publishing service under Section 274(c)(2)(B) is to be treated no differently than use of such information to market "telecommunications service" under Section 222(c)(1)(A) and (B).

D. Nondiscrimination Safeguards - NPRM (paras. 64-67)

Section 274(d) generally requires that a BOC "shall provide network access and interconnections for basic telephone service to electronic publishers at just and reasonable rates that are tariffed (so long as rates for such services are subject to regulation) and that are not higher on a per-unit basis than those charged for such services to any other electronic publisher or any separated affiliate engaged in electronic publishing." The Commission inquires whether regulations are necessary to implement this nondiscrimination safeguard. NPRM, para. 64.

The BOCs' nondiscrimination obligations are made sufficiently clear by the words of the statute and no implementing regulations are needed. For this reason, and the reasons stated at Section I, supra, the Commission should not adopt any such regulations.

III. ALARM MONITORING - SECTION 275

The Commission seeks comment on certain matters in connection with the provision of alarm monitoring service under Section 275 of the Act, NPRM, paras. 68-74. The Commission should conclude that the provision of underlying basic tariffed telecommunications services does not constitute the provision of alarm monitoring service. Furthermore, the Commission should conclude that a BOC that provides billing and collection services and sales agency services to unaffiliated alarm monitoring providers is not engaged in the "provision" of alarm monitoring service. Finally, the Commission should not undertake to adopt specific regulations to implement Section 275(b)(1).

A. Provision of Basic Tariffed Services - NPRM (para. 69)

The Commission observes that alarm monitoring service as defined in Section 275(e) appears to fall within the definition of an "information service" in Section 3(20) of the Act. NPRM, para. 69. However, the Commission tentatively concludes that provision of underlying basic tariffed telecommunications services alone, without an enhanced or information service component, does not fall within the definition of alarm monitoring service under Section 275(e). SBC agrees. As the Commission notes, various BOCs provide basic tariffed services used for alarm monitoring which do not involve enhanced or information services and, therefore, do not appear to be subject to the Act's general alarm monitoring prohibition. NPRM, para. 69.

B. The Provision of Alarm Monitoring Service - NPRM (para. 71)

Section 275(a)(1) prohibits a BOC or its affiliate from engaging in the "provision" of alarm monitoring services. The Commission seeks comment on what types of activities constitute the "provision" of alarm monitoring services for purposes of Section 275(a)(1). In particular, it seeks comment on whether, among other things, billing and collection, sales agency, marketing, and/or

various compensation arrangements, either individually or collectively, would constitute the provision of alarm monitoring. NPRM, para. 30.

As SBC's subsidiary, Southwestern Bell Telephone Company ("SWBT"), has demonstrated on multiple occasions, a BOC may (1) sell, install and maintain alarm CPE, (2) provide billing and collection services to an unaffiliated alarm monitoring service provider, and (3) enter into a non-exclusive sales agency relationship with such a provider. These activities -- whether considered individually or collectively -- do not equate to "provision" of alarm monitoring service. Copies of two pleadings and one ex parte so demonstrating are attached hereto as Attachments A, B and C.[14]

So long as the alarm monitoring service customer maintains a direct customer-provider relationship with an unaffiliated alarm monitoring service provider, and a BOC performs none of the functions that constitute "alarm monitoring service," there is no Section 275(a)(1) obstacle. Section 275 does not foreclose any and all BOC involvement in the alarm monitoring industry. Rather, it merely forecloses BOC "provision" of alarm monitoring service.

Various portions of the Act indicate that where Congress intended to prohibit marketing or sales activities, it used the terminology to do so. For example, in the electronic publishing context, Congress has determined that a BOC "shall not carry out any promotion, marketing, sales, or advertising . . . related to the provision of electronic publishing." Section 274(c)(1)(B) (emphasis added). Similarly, Congress included within the very definition of electronic publishing the separate activities of "dissemination, provision, publication, or sale" of certain prescribed content. Section

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[14] Southwestern Bell Telephone Company's Comparably Efficient Interconnection Plan for the Provision of Security Service, CC Docket Nos. 85-229, 90-623 and 95-20, Reply Comments of SWBT filed June 7, 1996 (Attachment A); and ex parte presentation of July 18, 1996, pages 1-4 (Attachment B), both of which are incorporated herein by reference, and attached for the convenience of the parties.

274(h)(1)(emphasis added). In the context of long distance, Congress has determined that a BOC "may not market or sell interLATA service provided by an affiliate" until interLATA relief is obtained. Section 272(g)(2)(emphasis added). The omission of such specific language in Section 275(a)(1) alone disposes of the question as to whether Congress sought to prohibit any activity beyond the actual provision of alarm monitoring service.

Equally as important, the above passages recognize, as have the Commission, courts and state legislatures, that sales and provisioning are separate and distinct activities. Early on, the Commission held that Computer II rules regarding the furnishing of CPE and enhanced services include both the "sale and provision" of CPE and enhanced services.[15] The distinction was again drawn in the Commission's Sales Agency Order, wherein the Commission recognized that CPE vendors acting as sales agents for the BOCs were engaged in selling "telephone company-provided" network services.[16] Courts have long understood that the cellular carrier, not its authorized agent, is the "provider" of cellular service.[17] Finally, state telecommunications laws likewise reflect that "sale" and "provision" are separate and distinct activities.[18]

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[15] Petitions for Waiver of Section 64.702 of the Commission's Rules and Regulations; Enf. File Nos. 83-19 and 83-35, Memorandum Opinion and Order, released January 4, 1984, at para. 7. (emphasis added).

[16] Sales Agency Order, 98 FCC 2d 943 (1984), para. 23.

[17] Attachment A, at 8-9 & n. 15.

[18] Tex. Rev. Civ. Stat. Ann. Art. 1446c-0 Section 3.501(b) (West Supp. 1996) (stating, in part, that "a telecommunications utility may not use specific CPNI for commercial purposes other than the sale, provision, or billing and collection of telecommunications or enhanced services") (emphasis added).